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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/10

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE Cigarette Tax Increase and Tribal Tax Credit SB 4

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$33,146.5	\$33,146.5	Recurring	General Fund
	\$4.2	\$4.2	Recurring	County & Muni Recreation Fund
	(\$3.9)	(\$3.9)	Recurring	County & Muni Cigarette Fund
	\$4.2	\$4.2	Recurring	UNM Cancer Center
	\$0.2	\$0.2	Recurring	NMFA
	(\$3.8)	(\$3.8)	Recurring	NMFA for UNM Health
	(\$2.7)	(\$2.7)	Recurring	NMFA for DOH
	(\$3.2)	(\$3.2)	Recurring	Rural County Cancer Treatment

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 4 increases the excise tax rate on cigarettes by 75 cents a pack and adjusts the distributions to the beneficiaries so that the revenue from the increase goes to the States' general fund but leaves the distributions to the other beneficiaries approximately at their current revenue levels. This bill also revises the current cigarette tax exemption for tribal cigarette sales to be predicated on certification by each particular tribe that it has in place a "qualifying tribal cigarette tax" of at least \$0.75 per pack. This bill also adjusts the discounts allowed on the sales price of cigarette tax stamps to maintain the current value of the discount.

New Distributions under this bill

	Current Law	SB4
County/Municipal Recreational Fund	1.35%	0.86%
County/Municipal Cigarette Tax Fund	2.69%	1.70%
UNM HSC	1.35%	0.86%
NMFA	2.02%	1.28%
NMFA/HSC	14.37%	9.10%
NMFA/DOH	6.05%	3.83%
NMFA/CEA (general fund)	15.79%	10.00%
NMFA/rural county cancer treatment	1.00%	0.63%
General Fund	55.38%	71.74%

Changes to Excise Taxes and Vendor Discounts

<i>Changes tax rate on cigarettes</i>	Current Law	SB4
Cigarette	\$ 0.0455	\$ 0.083
Pack of 20	\$ 0.9100	\$ 1.66
Cigarette in packs of five	\$ 0.1820	\$ 0.332
Pack of 5	\$ 0.9100	\$ 1.66

<i>Changes the discounts for stamps</i>	Current Law	SB4
Less than \$30,000 of stamps	1.00%	0.55%
\$30,000 to 60,000	0.80%	0.44%
\$60,000 or more	0.50%	0.27%

The effective date of this bill’s provisions is July 1, 2010.

FISCAL IMPLICATIONS

TRD assumed that revenue generated from an increased tax rate would be partially offset by a decline in demand for cigarettes in general and *taxable* cigarettes in particular. The percentage distributions are adjusted so that the current beneficiaries, other than the general fund, are not impacted by the increase.

TRD:

Tribal cigarette volumes are current about 31 million packs per year. If all tribes were to impose the \$0.75 “qualifying tribal cigarette tax”, the revenue yield to tribes could be as much as \$20 million to \$25 million per year. The Department has insufficient information about cigarette prices charged by tribal sellers to calculate a more precise estimate of tribal revenue.

(1) The “Cigarette Inventory Tax” (Section 7-12-3.1 NMSA 1978) is distinctly separate from the “Cigarette Tax” and is distributed entirely to the State General Fund. The estimate has assumed that less than one-half of the first month of additional revenue may be collected as inventory tax, and that retailer purchases in the first month will be weaker than normal after stocking to capacity in June to beat the tax increase. Thus, some strength in FY2010 June revenue may be expected, but that impact has not been included in the estimated revenue.

(2) Cigarette Tax revenue to the NMFA Credit Enhancement Account is ultimately forwarded to the State General Fund. The total General Fund impact with inclusion of the NMFA Credit Enhancement Account is shown as “General Fund”. The impact on the NMFA Credit Enhancement Account is -3.5 thousand (negative) per year.

The bill proposes the new concept of the “qualifying tribal cigarette tax” in an amount at least equal to \$0.75 per pack (the state cigarette tax increase). This should serve to significantly lessen any additional loss of state taxable cigarette volumes to tribal cigarette sellers (assuming tribes have no such tax currently in place). Without such a provision, the increase in the state Cigarette Tax rate would probably result in the shifting of a significant volume (as much as 19%) of additional cigarette sales to tax-exempt Tribal retail sellers. With the “qualifying tribal cigarette tax” provision, state taxable volume would be expected to decline by about 13%.

Currently, state taxable cigarette volume is 67% of total consumption and tax-exempt Tribal cigarette volume is 33% of total consumption.

SIGNIFICANT ISSUES

The increase in the state tax would move New Mexico from 31st highest excise tax to 18th. Colorado has an 84 cent tax, Arizona taxes at \$2.00, Utah taxes at \$0.695, and Texas taxes \$1.41 per pack (see Attachment 1).

TRD:

The Cigarette Tax rate was last increased in 2003 when the rate was increased from \$0.21 per pack to \$0.91 per pack. Prior to that, the tax rate was increased from \$0.15 per pack to \$0.21 per pack in 1993. The \$0.15 per pack tax had been in effect from 1986 through 1993.

On March 31, 2009 the federal cigarette tax rate increased from 39 cents per pack to \$1.01 per pack, which was expected to decrease cigarette consumption by about 8%. The federal tax increase was expected to affect the volume of both state taxable cigarettes and tax-exempt Tribal sales.

ADMINISTRATIVE IMPLICATIONS

This bill will have a moderate impact on TRD.

The proposed legislation adjusts cigarette tax distributions levels to various beneficiaries including the New Mexico Finance Authority (NMFA). The NMFA distributions are intended to assist in the support and enhancement of bonds issued for a variety of health sciences facilities. These distributions are typically used as credit enhancements of last resort and make up only a small piece of overall potential repayment streams. LFC staff has discussed the implications of lowering these distributions as per the proposed legislation with NMFA and has determined that such decreases will have no material detrimental impacts on the NMFA's ability to pay debt service on or the creditworthiness of such bonds.

TECHNICAL ISSUES

TRD:

It will be difficult to insure that the qualifying tribal cigarette tax will in fact be paid on packages bearing tax-credit stamps. There is no mechanism for a separate tribal stamp or other identification on packages of cigarettes to indicate that the qualifying tribal cigarette tax has been paid, so examination of packages will not provide a means of enforcement. There appears to be some risk that difficulty of enforcement could eventually jeopardize the State's Master Settlement Agreement (MSA) funds (the Attorney General's Office should evaluate that risk). Requiring separate tribal stamps, however, would place a relatively high administrative burden on tribes as well as distributors.

The broader language used to define "tribe's land" in the bill may create opportunities for tax-credit stamps to further erode the State's cigarette tax base.

BLG/mt

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

State Cigarette Tax Rates (as of July 1, 2009)

State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)	State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)
Alabama	\$0.425	45	Rhode Island	\$3.460	1
Alaska	\$2.000	9	New York	\$2.750	2
Arizona	\$2.000	10	New Jersey	\$2.700	3
Arkansas	\$1.150	26	Hawaii	\$2.600	4
California	\$0.870	32	Wisconsin	\$2.520	5
Colorado	\$0.840	33	Massachusetts	\$2.510	6
Connecticut	\$2.000	11	Vermont	\$2.240	7
D.C.	\$2.000	12	Washington	\$2.025	8
Delaware	\$1.150	27	Alaska	\$2.000	9
Florida	\$1.339	23	Arizona	\$2.000	10
Georgia	\$0.370	46	Connecticut	\$2.000	11
Hawaii	\$2.600	4	D.C.	\$2.000	12
Idaho	\$0.570	42	Maine	\$2.000	13
Illinois	\$0.980	30	Maryland	\$2.000	14
Indiana	\$0.995	29	Michigan	\$2.000	15
Iowa	\$1.360	21	New Hampshire	\$1.780	16
Kansas	\$0.790	35	Montana	\$1.700	17
Kentucky	\$0.600	40	S. Dakota	\$1.530	18
Louisiana	\$0.360	47	Minnesota	\$1.504	19
Maine	\$2.000	13	Texas	\$1.410	20
Maryland	\$2.000	14	Iowa	\$1.360	21
Massachusetts	\$2.510	6	Pennsylvania	\$1.350	22
Michigan	\$2.000	15	Florida	\$1.339	23
Minnesota	\$1.504	19	Ohio	\$1.250	24
Mississippi	\$0.680	37	Oregon	\$1.180	25
Missouri	\$0.170	50	Arkansas	\$1.150	26
Montana	\$1.700	17	Delaware	\$1.150	27
N. Carolina	\$0.350	48	Oklahoma	\$1.030	28
N. Dakota	\$0.440	44	Indiana	\$0.995	29
Nebraska	\$0.640	38	Illinois	\$0.980	30
Nevada	\$0.800	34	New Mexico	\$0.910	31
New Hampshire	\$1.780	16	California	\$0.870	32
New Jersey	\$2.700	3	Colorado	\$0.840	33
New Mexico	\$0.910	31	Nevada	\$0.800	34
New York	\$2.750	2	Kansas	\$0.790	35
Ohio	\$1.250	24	Utah	\$0.695	36
Oklahoma	\$1.030	28	Mississippi	\$0.680	37
Oregon	\$1.180	25	Nebraska	\$0.640	38
Pennsylvania	\$1.350	22	Tennessee	\$0.620	39
Rhode Island	\$3.460	1	Kentucky	\$0.600	40
S. Carolina	\$0.070	51	Wyoming	\$0.600	41
S. Dakota	\$1.530	18	Idaho	\$0.570	42
Tennessee	\$0.620	39	West Virginia	\$0.550	43
Texas	\$1.410	20	N. Dakota	\$0.440	44
Utah	\$0.695	36	Alabama	\$0.425	45
Vermont	\$2.240	7	Georgia	\$0.370	46
Virginia	\$0.300	49	Louisiana	\$0.360	47
Washington	\$2.025	8	N. Carolina	\$0.350	48
West Virginia	\$0.550	43	Virginia	\$0.300	49
Wisconsin	\$2.520	5	Missouri	\$0.170	50
Wyoming	\$0.600	41	S. Carolina	\$0.070	51